HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.982 of 2007

Appellant

The Oriental Insurance Co. Ltd., Raipur, Policy No.2005-6747, Limitation 25-01-2005 to 24-01-06, Madeena Building, Jail Road, Raipur, Distt. Raipur (C.G.)

versus

Respondents

1. Ishwar Prasad, S/o Thanda Ram, age about 45 years, Coste - Shahani
2. Smt. Shambai, W/o Thanda Ram, age about 42 years, Coste – Shahani
3. Kumari Hiroundi, D/o Ishwar Prasad, age about 19 years, Coste -Shahani
4. Smt. Ashamoti, W/o Thandaram, age about 68 years, Coste – Shahani
5. Thanda Ram, S/o Late Sri Dingro, age about 70 years, Coste – Shahani

   Respondent No.1 to 5 Address of Village Arekel, Thana Basana, Tah. Basana, Distt. Mahasamund (C.G.)
6. Ashok Sagar, age about 17 years, S/o Late Dagar Sagar Chouhan, For Minor of Through Guardian Smt. Janki Bai, Widow Late Sri Dagar Sagar Chouhan, Hero Honda Passion No.CG06/B/3560 of Driver, Resident of Near To F.C.I., Godam, Basana, Thana Basana Tahsil Basana, Distt. Mahasamund (C.G.)
7. Krishna Gopal @ Gopal, age about 26 years, S/o Banarasi Das, R/o Village Tikarapara, Thana Basana, Registered Owner of Hero Honda Passion No.CG 06/B/3560 Tahsil Basana, Distt. Mahasamund (C.G.)

Appeal under Section 173 of the Motor Vehicles Act

(48)

Present : Appellant by Shri Sudhir Agrawal, learned counsel.
Respondents No.1 to 5 by Shri Abhishek Sharma, learned counsel.
Respondent No.6/driver absent though served.
Respondent No.7/owner also absent though served.

ORAL ORDER
(Passed on 23rd of November, 2007)

The appellant/insurance company is aggrieved by an award dated 05-02-2007 passed by the Motor Accidents Claims Tribunal, Mahasamund (henceforth 'the MACT') in Claim Case No.99/2006, whereby compensation of Rs.2,42,000/- was awarded against the appellant/insurance company and respondents No.6 and 7 in an accidental death case.

(2) In this appeal, it is not disputed by learned counsel for the parties that on 30-07-2005, Naresh Sahani, a cyclist, aged 22 years, died as a result of collision with motor cycle Hero Honda Passion No.CG06/B/3560, owned by respondent No.7 and being driven by respondent No.6, who was aged 17 years. It is also not in dispute that a criminal prosecution was launched against respondent No.6 before the Juvenile Court, Raipur for causing death due to rash and negligent driving.

(3) The sole argument advanced by Shri Sudhir Agrawal, learned counsel for the appellant/insurance company is that the insurance company is not liable to pay compensation in a case where the offending vehicle was being driven by a person, who did not and being a minor could not possess a valid and effective driving licence. Learned counsel urged that it was clear as daylight that liability to pay compensation could not be fastened on the insurance company due to a fundamental breach of the condition of insurance policy.

(4) Shri Abhishek Sharma, learned counsel for respondents No.1 to 5/claimants has not disputed that the offending vehicle was being driven by a minor, who did not possess any driving licence. It was urged that in the event of the appeal being allowed, liability to pay compensation should rest with the owner, i.e., respondent No.7.

(5) In a catena of decisions, the Apex Court has held that where the driver of the offending vehicle did not possess a valid and effective driving licence at the time of accident, it amounts to a fundamental breach of the condition of insurance policy and liability to pay compensation cannot be fastened on the insurance company. In this case, admittedly, respondent No.6/driver was a minor on the date and time of accident and a criminal prosecution was also launched against him before the Juvenile Court for causing death by rash and negligent driving. Since no driving licence could be granted to a minor in law for driving the offending motor cycle, it is crystal clear that there was a fundamental breach of the condition of insurance policy. In this view of the matter, liability to pay compensation could not be fastened on the appellant/insurance company and it solely and squarely rests with respondent No.7/owner.

(6) In the result, the appeal is allowed. The impugned award is modified. The appellant/insurance company is exonerated from its liability to pay compensation. It shall be open to the appellant/insurance company to initiate execution proceedings against respondent No.7/owner for recovery of the amount already deposited by it.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal